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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

LAWRENCE JAMES SACCATO,
Plaintiff,

v.

DAVIS LAW FIRM; DKC INVESTMENTS
LLC a/s/o; FIRST NATIONAL BANK OF
OMAHA,
Defendants.

Case No. CV-10-6192 TC

**REPLY IN SUPPORT OF DEFENDANT
FIRST NATIONAL BANK OF OMAHA'S
MOTION TO DISMISS**

Plaintiff devotes several pages of his opposition brief attempting to characterize the pleading standards under the Federal Rules of Civil Procedure. To support that attempt, he cites several cases that purportedly state the correct standards. Plaintiff's cited cases, however, precede the United States Supreme Court's decisions in *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S. Ct. 1937 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007). Thus, plaintiff's cases do not help him to the extent they are inconsistent with *Iqbal* and *Twombly*.

Although *pro se* complaints may be more liberally construed, they still "must meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong." See, e.g., *Brazil v. United States Dept. of Navy*, 66 F.3d 193, 199

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(9th Cir. 1995); *see also Henderson v. Sheahan*, 196 F.3d 839, 846 (7th Cir. 1999) (“pro se complainant can plead himself out of court by pleading facts that undermine the allegations set forth in his complaint”).

Here, plaintiff’s third amended complaint fails to meet the minimum threshold. It quotes section 1681s-2(b) of the Fair Credit Reporting Act (“FCRA”). But it fails to allege *any* facts that would put FNBO on notice of what it allegedly did to constitute a violation of section 1681s-2(b) of the FCRA. *See Brazil*, 66 F.3d at 199; *see also Iqbal*, 129 S. Ct. at 1949 (requiring complaint to contain “factual content that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged”). Nor does plaintiff’s opposition to FNBO’s motion point to any such facts in the complaint. Indeed, it can’t. The complaint alleges only that FNBO:

- “[R]eported this account to all three [credit] bureaus * * * with erroneous and inaccurate information * * *”;
- Did not report the account to the credit bureaus as disputed; and
- “[U]pdated * * * [p]laintiff[’]s credit reports with inaccurate and erroneous information.”

(Third Amended Complaint, ¶ 20, 21, 25). Even if the court assumed the truth of those allegations and drew all reasonable inferences in plaintiff’s favor, at best, those allegations implicate the duties of furnishers of information under a different section of the FCRA – section 1681s-2(a). And, unlike a section 1681s-2(b) violation, a 1681s-2(a) violation does *not* give rise to a private cause of action. *See* 15 U.S.C. §1681s-2(c).

Plaintiff, therefore, fails to meet even the minimum threshold for his pro se complaint to survive FNBO’s motion to dismiss. For those reasons, and the ones

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discussed in FNBO's motion, the court should grant the motion and dismiss plaintiff's claims against FNBO.

DATED: October 28, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANT FIRST NATIONAL BANK OF OMAHA'S MOTION TO DISMISS** on the date indicated below by:

- ☒ mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- ☐ hand delivery,
- ☐ facsimile transmission,
- ☐ overnight delivery,
- ☒ electronic filing notification;

I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorney(s) at the address(es) listed below:

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DATED: October 28, 2010

/s/ Robert E. Sabido
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